

**Maine Revised Statutes**  
**Title 38: WATERS AND NAVIGATION**  
**Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS**

**§551. MAINE COASTAL AND INLAND SURFACE OIL CLEAN-UP FUND**

The Maine Coastal and Inland Surface Oil Clean-up Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. The fund is limited to \$6,000,000, the sum of which includes all funds credited under this section. The Department of Environmental Protection shall collect fees in accordance with subsection 4. To this fund are credited all license fees, penalties, reimbursements and other fees and charges related to this subchapter, and to this fund are charged any and all expenses of the department related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, restoration of water supplies and 3rd-party damages covered by this subchapter. [1995, c. 399, §2 (AMD); 1995, c. 399, §21 (AFF).]

Money in the fund, not needed currently to meet the obligations of the department in the exercise of its responsibilities under this subchapter must be deposited with the Treasurer of State to the credit of the fund, and may be invested in such manner as is provided for by statute. Interest received on that investment must be credited to the Maine Coastal and Inland Surface Oil Clean-up Fund. [1995, c. 399, §3 (AMD); 1995, c. 399, §21 (AFF).]

**1. Research and development.**

[ 1993, c. 720, §2 (AMD); T. 38, §551, sub-§1 (RP) .]

**1-A. Sensitive area data management and mapping.** The Legislature may allocate no more than \$350,000 per year of the amount then currently in the fund until fiscal year 1994-95 to mapping, data management and computerization related to the protection of sensitive areas and similar activities required under section 546-B. This limitation does not include personnel costs. The allocations must be made in accordance with section 555. After fiscal year 1993-94, the Legislature must review the need for these activities before allocating additional funds.

[ 1991, c. 454, §8 (NEW) .]

**1-B. Research and development.** The Legislature may allocate not more than \$250,000 per annum of the amount currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products. Researchers receiving funds under this subsection shall use vessels based in this State as platforms when practicable. Such allocations must be made in accordance with section 555.

[ 2005, c. 561, §5 (AMD) .]

**2. Third-party damages.** Any person claiming to have suffered property damage or actual economic damages, including, but not limited to, loss of income and medical expenses arising from physical bodily injury, directly or indirectly as a result of a discharge of oil prohibited by section 543 including all discharges of oil from interstate pipelines, in this subsection called the claimant, may apply within 12 months after the occurrence of a discharge to coastal waters and for other surface discharges within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, to the commissioner stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The commissioner may, upon petition and for good cause shown, waive

the time limitation for filing damage claims. All 3rd-party damage claims for which no determination of award has been made must be processed in accordance with the substantive and procedural provisions of this section.

A. When a responsible party is known, the commissioner shall send by certified mail to the responsible party notice of claim and written notice of the right to join the 3rd-party damage claim process as an interested party. A responsible party shall provide written notification to the department of the responsible party's intent to join within 10 working days of receipt of this notice. If the responsible party joins as an interested party and formally agrees in writing to the amount of the damage claim, the determination of the amount of the claim and award is binding in any subsequent action for reimbursement to the fund. If a claimant has not been compensated for 3rd-party damages by the responsible party and the claimant, the responsible party and the commissioner agree as to the amount of the damage claim, or if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the Maine Coastal and Inland Surface Oil Clean-up Fund. [1991, c. 817, §11 (AMD).]

B. If the claimant, the responsible party and the commissioner are not able to agree as to the amount of the damage claim, or if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner are not able to agree as to the amount of the damage claim, the claim is subject to subsection 3-A. [1991, c. 817, §11 (AMD).]

C. Third-party damage claims must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made are waived unless the damage or injury was not known at the time of the claim. [1991, c. 817, §11 (AMD).]

D. Damage claims arising under this subchapter that are a result of a prohibited discharge to coastal waters are recoverable only in the manner provided under this subchapter, it being the intent of the Legislature that the remedies provided in this subchapter for discharges to coastal waters are exclusive. [1991, c. 817, §11 (AMD).]

E. Awards from the fund on damage claims may not include any amount the claimant has recovered, on account of the same damage, by way of settlement with the responsible party or the responsible party's representatives or judgment of a court of competent jurisdiction against the responsible party to the extent these amounts are duplicative. [1991, c. 817, §11 (AMD).]

F. A claimant shall take all reasonable measures to prevent and minimize damages suffered by the claimant as a result of a discharge of oil. Reasonable measures include title searches and site assessments for the acquisition of commercial or industrial properties. [1991, c. 817, §11 (NEW).]

G. The remedies provided for 3rd-party damage claims compensated under this subchapter are nonexclusive for damages that are not a result of prohibited discharges to coastal waters. A court awarding damages to a claimant as a result of a discharge of oil to surface waters prohibited by section 543 shall reduce damages awarded by any amounts received from the fund to the extent these amounts are duplicative. [1991, c. 817, §11 (NEW).]

H. Payments from the fund for 3rd-party damage claims may not exceed \$200,000 per claimant except when the damages are a result of a discharge to coastal waters. [1991, c. 817, §11 (NEW).]

I. A 3rd-party damage claim for damages to real estate may not include the devaluation of the real estate associated with the loss of a water supply if the commissioner finds under section 548 that a public or private water supply is available and if that water supply best meets the criteria of that section and the property owner did not agree to be served by that public or private water supply. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for expenses incurred in treating or replacing the well if the well is installed in an area delineated as contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.

For purposes of this paragraph, "viable community public water system" has the same meaning as in section 548. [1993, c. 621, §2 (AMD).]

J. A claimant is not eligible for compensation under this subsection for costs, expenses or damages related to a discharge if the commissioner determines that the claimant is a responsible party as defined under section 542, subsection 9-C. [2003, c. 551, §9 (AMD).]

K. Prior to forwarding a claim to the hearing examiner under subsection 3-A, the commissioner may require that the amount of the claim be finalized. [1991, c. 817, §11 (NEW).]

L. Third-party damage claims may not include expenditures for the preparation and prosecution of the damage claim, such as legal fees or real estate appraisal fees. [1991, c. 817, §11 (NEW).]

M. The commissioner may dismiss a 3rd-party damage claim for untimely filing, for failure by the claimant to provide the information necessary to process the claim within 60 days after the claimant receives written notice that the claim is insufficient for processing or for ineligibility as determined by the commissioner under paragraph J. A dismissal may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2003, c. 551, §10 (NEW).]

[ 2005, c. 330, §20 (AMD) .]

## **2-A. Exceptions; 3rd party damage claims.**

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §118 (RP) .]

**2-B. Claimant contact.** When the commissioner becomes aware of a claimant under subsection 2, the commissioner shall send a letter by certified mail to inform that person of the 3rd-party damage claims process under subsection 2. The letter must contain the name and telephone number of a contact person available to explain the claims procedure.

[ 1991, c. 817, §12 (NEW) .]

## **3. Board of Arbitration.**

[ 1991, c. 817, §13 (RP) .]

**3-A. Determination of disputed 3rd-party damage claims.** The commissioner shall establish a disputed claims processing capability within the department to hear and determine claims filed under this subchapter that are not agreed upon by the claimant and the commissioner and any responsible party who has joined as an interested party.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims. The parties to the hearing are the commissioner and the claimant. [1991, c. 817, §14 (NEW).]

B. To the extent practical, all claims arising from or related to a common discharge must be heard and determined by the same hearing examiner. [1991, c. 817, §14 (NEW).]

C. Hearings before the hearing examiner are informal and the rules of evidence applicable to judicial proceedings are not binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination. [1991, c. 817, §14 (NEW).]

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. The party seeking review of a hearing examiner's determination must file an appeal in the Superior Court within 30 days of the determination. Determinations made by the hearing examiner must be accorded a presumption of regularity and validity in a subsequent reimbursement action, but this presumption may be rebutted by responsible parties. [1993, c. 355, §12 (AMD).]

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner and shall certify the name of the claimant to the Treasurer of State. [1991, c. 817, §14 (NEW).]

[ 1993, c. 355, §12 (AMD) .]

**4. Funding.** The Maine Coastal and Inland Surface Oil Clean-up Fund is funded pursuant to this subsection.

A. License fees are 3¢ per barrel of unrefined crude oil and all other refined oil, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel and diesel fuel, transferred by the licensee during the licensing period and must be paid monthly by the licensee on the basis of records certified to the commissioner. License fees must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund. [1997, c. 364, §26 (AMD).]

B. [1991, c. 817, §15 (RP).]

C. [1985, c. 496, Pt. A, §13 (RP).]

D. Any person required to register under section 545-B and who first transports oil in Maine shall pay 3¢ per barrel for all crude and refined oil, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel, diesel fuel and liquid asphalt transported by the registrant during the period of registration. Fees must be paid monthly by the registrant on the basis of records certified to the commissioner. Fees must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund. The registrant shall make available to the commissioner and the commissioner's authorized representatives all documents relating to the oil transported by the registrant during the period of registration. This paragraph does not apply to waste oil transported into Maine in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and is subject to fees established under section 1319-I. [2013, c. 349, §1 (AMD).]

E. When the commissioner projects that the fund balance will reach \$6,000,000, the commissioner shall provide a 15-day notice that the per barrel fees assessed under this subsection will be suspended. The \$6,000,000 fund limit may be exceeded to accept transfer fees assessed or received after the 15-day notice has been issued. Following any suspension of fees assessed under this subsection, the commissioner shall provide a 15-day advance notice to licensees before fees are reimposed. [1991, c. 817, §16 (NEW).]

[ 2013, c. 349, §1 (AMD) .]

**4-A. Penalty for late payment of fees.** Fees assessed under subsection 4 are due to the department on or before the last day of the month immediately following the month in which the oil was transferred or first transported in this State. Licensees or registrants who fail to pay the fee by that date shall pay an additional

amount equal to 10% of the amount assessed under subsection 4. The department may waive the penalty for good cause shown by the licensee or registrant. Good cause may include, without limitation, events that may not be reasonably anticipated or events that were not under the control of the licensee or registrant.

[ 1999, c. 334, §1 (NEW) . ]

**5. Disbursements from fund.** Money in the Maine Coastal and Inland Surface Oil Clean-up Fund shall be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the commissioner related to the enforcement of this subchapter; [1995, c. 399, §4 (AMD); 1995, c. 399, §21 (AFF) . ]

B. All costs, including without limitation personnel undertaking oil spill response activities and equipment expenses, involved in the removal of oil, the abatement of pollution and the implementation of remedial measures including restoration of water supplies, related to the discharge of oil, petroleum products and their by-products covered by this subchapter, including all discharges from interstate pipelines and other discharges prohibited by section 543; [1991, c. 698, §10 (AMD) . ]

C. Sums allocated to research and development in accordance with this section; [1985, c. 496, Pt. A, §13 (AMD) . ]

D. Payment of 3rd party claims awarded in accordance with this section; [1985, c. 496, Pt. A, §13 (AMD) . ]

E. Payment of costs of hearings, independent hearing examiners and independent claims adjusters for 3rd-party damage claims; [2009, c. 501, §5 (AMD) . ]

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund; [1985, c. 496, Pt. A, §13 (AMD) . ]

G. [1991, c. 817, §18 (RP) . ]

H. Sums, up to \$50,000 each year, that have been allocated by the Legislature on a contingency basis in accordance with section 555 for payment of costs for damage assessment for specific spills and site-specific studies of the environmental impacts of a particular discharge prohibited by section 543 that may have adverse economic effects and occur subsequent to such an allocation, when those studies are determined necessary by the commissioner; and [1991, c. 698, §11 (AMD) . ]

I. Payment of costs for the collection of overdue reimbursements. [1989, c. 868, §8 (NEW) . ]

[ 2009, c. 501, §5 (AMD) . ]

**6. Reimbursements to Maine Coastal and Inland Surface Oil Clean-up Fund.** For the use of the fund, the commissioner shall seek recovery of all disbursements from the fund for the following purposes, including overdrafts and interest computed at 15% a year from the date of expenditure, unless the department finds the amount involved too small, the likelihood of success too uncertain or that recovery of costs is unlikely due to the inability of the responsible party to pay those costs, provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 must be apportioned between the Maine Coastal and Inland Surface Oil Clean-up Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

A. All disbursements made by the fund pursuant to subsection 5, paragraphs B, D, E, H and I in connection with a prohibited discharge; and [1991, c. 454, §12 (RPR) . ]

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursements made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with any single prohibited discharge including 3rd-party claims in excess of \$15,000, except to the extent that the costs are covered by payments received under any federal program. [1991, c. 454, §12 (RPR) . ]

C. [1989, c. 868, §9 (RP); 1991, c. 66, Pt. A, §21 (RP) . ]

D. [1989, c. 868, §9 (RP); 1991, c. 66, Pt. A, §21 (RP).]

Requests for reimbursement to the fund, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General in conformance with Title 5, section 191, or the department may file suit in District Court. The commissioner may file claims with appropriate federal agencies to recover for the use of the fund all disbursements from the fund in connection with a prohibited discharge.

Requests for reimbursement to the fund for disbursements pursuant to subsection 5, paragraph B, if not paid within 60 days of demand, are subject to a penalty not to exceed twice the total amount of reimbursement requested. This penalty is in addition to the reimbursement requested and any other fines or civil penalties authorized by this Title.

[ 2007, c. 292, §29 (AMD) .]

**6-A. Lien.** All costs incurred by the State in the removal, abatement and remediation of a prohibited discharge of oil and interest are a lien against the real estate of the responsible party. The lien does not apply to the real estate of a licensee if the discharge was caused or suffered by a carrier destined for the licensee's facilities.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

[ 2009, c. 501, §6 (AMD) .]

**7. Waiver of reimbursement.** Upon petition of any licensee, the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

A. An act of war; [1985, c. 496, Pt. A, §13 (AMD).]

B. An act of government, either state, federal or municipal, except insofar as the act was pursuant to section 548; or [1991, c. 2, §147 (COR).]

C. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency. [1993, c. 1, §125 (COR).]

Upon such finding by the board, immediate credit therefor must be entered for the party involved. The findings of the board are conclusive as it is the legislative intent that waiver provided in this subsection is a privilege conferred, not a right granted.

[ 1993, c. 1, §125 (COR) .]

**8. Disbursements to state agencies.** A state agency that seeks reimbursement from the Maine Coastal and Inland Surface Oil Clean-up Fund for costs incurred in undertaking oil spill response activities shall keep time records demonstrating the amount of spill response activities performed for which reimbursement

is sought. A state agency may establish a dedicated account for receipt of disbursements from the fund. Disbursements from the fund to a state agency pursuant to subsection 5, paragraph B must be deposited in that account, if it has been established, and may be used by the agency to support its activities.

[ 1997, c. 188, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1973, c. 625, §§278,279 (AMD). 1975, c. 379, §§1-3 (AMD). 1977, c. 375, §§10-16 (AMD). 1979, c. 541, §A268 (AMD). 1979, c. 708, (AMD). 1981, c. 356, §§1,2 (AMD). 1983, c. 273, §§1,2 (AMD). 1983, c. 483, §§11-15 (AMD). 1985, c. 496, §A13 (AMD). 1985, c. 746, §22 (AMD). 1987, c. 750, §3 (AMD). 1989, c. 500, §§1-3 (AMD). 1989, c. 502, §A147 (AMD). 1989, c. 868, §§4-9,19 (AMD). 1989, c. 890, §§A40,B117- 123 (AMD). RR 1991, c. 2, §147 (COR). 1991, c. 66, §§A19-21 (AMD). 1991, c. 66, §A42 (AFF). 1991, c. 454, §§8-12 (AMD). 1991, c. 454, §14 (AFF). 1991, c. 698, §§10,11 (AMD). 1991, c. 817, §§11-19 (AMD). RR 1993, c. 1, §125 (COR). 1993, c. 355, §§11-13 (AMD). 1993, c. 621, §2 (AMD). 1993, c. 720, §§2,3 (AMD). 1995, c. 399, §§2-4 (AMD). 1995, c. 399, §21 (AFF). 1997, c. 188, §1 (AMD). 1997, c. 364, §§26-29 (AMD). 1999, c. 334, §1 (AMD). 2003, c. 137, §1 (AMD). 2003, c. 551, §§9,10 (AMD). 2005, c. 330, §20 (AMD). 2005, c. 561, §5 (AMD). 2007, c. 292, §29 (AMD). 2009, c. 501, §§5, 6 (AMD). 2013, c. 349, §1 (AMD).

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